

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

NORMAN E. LACEY,

Plaintiff,

v.

CITY OF AUBURN,

Defendant.

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CASE NO: 3:06-CV-1145-MEF

MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANT

COMES NOW Defendant in the above-styled cause, and pursuant to *Federal Rule of Civil Procedure* 56, moves this Court to grant summary judgment in favor of Defendant in that there is no genuine issue of material fact to be submitted to a jury and judgment should be entered in its favor as a matter of law as to all Plaintiff's claims. In support of this motion, the Defendant relies upon the following:

1. All pleadings filed in this matter.
2. Exhibits A through K, attached hereto¹

Exhibit A - Deposition of Norman Lacey

Exhibit B - Affidavit of Steve Reeves with Exhibit B-1

Exhibit C- Affidavit of Scott Cummings with Exhibit C-1

Exhibit D- Affidavit of Eric Carson

Exhibit E- Affidavit of Mikel Thompson

Exhibit F- Affidavit of Charles Howard

Exhibit G - Affidavit of Jill Holland

¹ Although specific page/line or paragraph cites are made to all factual statements made in the memorandum brief, Defendant relies on the deposition and affidavits referenced in their entirety and reserve the right to further cite to the deposition or affidavits relied upon, if necessary, when replying to any response Plaintiff might file to this motion.

Exhibit H- Affidavit of Kathy Bullard
Exhibit I- Affidavit of Derek Godfrey
Exhibit J- Hildreth Driver's License
Exhibit K- Hildreth Application for Water Distribution Manager

3. Memorandum Brief, submitted contemporaneously herewith.

WHEREFORE PREMISES CONSIDERED, the Defendant requests summary judgment be granted in its favor and all Plaintiff's claims dismissed as a matter of law.

Respectfully submitted this the 14th day of December 2007.

City of Auburn, Defendant

By: /s/ Randall Morgan
Randall Morgan [MORG8350]
Attorney for Defendant City of Auburn

OF COUNSEL:
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CERTIFICATE OF SERVICE

I hereby certify that on this the 14th day of December, 2007, I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification to the following via email:

Roderick E. Cooks, Esq.
Winston Cooks, LLC
The Penick Building
319 17th Street North
Birmingham, Alabama 35203

/s/ Randall Morgan
OF COUNSEL

EXHIBIT “A”

DEPOSITION OF NORMAN LACEY

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

CIVIL ACTION NUMBER

3:06-CV-1145-MEF

NORMAN E. LACEY,

Plaintiff(s),

vs.

CITY OF AUBURN,

Defendant(s).

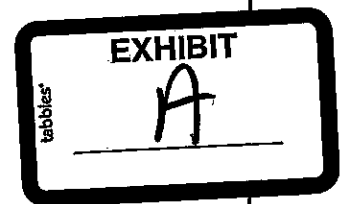
DEPOSITION TESTIMONY OF:

NORMAN E. LACEY

July 26, 2007

10 AM

SELAH M. DRYER, CSR



COPY

1 EXAMINATION BY MR. MORGAN:

2 Q. State your name, please.

3 A. Norman Lacey.

4 Q. Mr. Lacey, what is your date of
5 birth?

6 A. August 10th, 1948.

7 Q. What is your Social Security
8 Number?

9 A. 418-66-2239.

10 Q. Do you have a valid Alabama
11 driver's license?

12 A. Yes, sir I do.

13 Q. What is that number?

14 A. I can look it up.

15 Q. Sure.

16 A. 2537095.

17 Q. Has your driver's license ever
18 been suspended or revoked for any reason?

19 A. No, sir.

20 Q. Have you held a driver's license
21 in any other states besides Alabama?

22 A. No, sir.

23 Q. Are you from Alabama?

1 A. Vigor High School in Prichard.

2 Q. Do you have any education above
3 high school?

4 A. Yes, sir.

5 Q. Where is that from, Faulkner?

6 A. Yes, sir.

7 Q. Is that a two-year school?

8 A. Yes, sir.

9 Q. Do you have a degree or
10 certificate from there?

11 A. A degree, yes, sir.

12 Q. What's it in?

13 A. Water and waste water management.

14 Q. When did you receive that?

15 A. I believe it was 1990 -- may have
16 been '89.

17 Q. So you graduated from high school,
18 worked, and then went back to Faulkner?

19 A. That's correct.

20 Q. Do you have any formal education
21 beyond Faulkner?

22 A. I have attended some college
23 classes -- I don't have a college degree.

1 Q. What college classes: Where?

2 A. University of South Alabama.

3 Q. Were you formally enrolled?

4 A. Yes, sir.

5 Q. What years were you at South
6 Alabama?

7 A. '73 to '75 I think.

8 Q. What was your course of study?

9 A. Civil engineer.

10 Q. And I think you hold several
11 certificates?

12 A. Yes, sir.

13 Q. What certificates do you hold?

14 A. I hold a certificate in water
15 treatment, highest available. Waste water
16 treatment, highest available -- and a master
17 plumber's license.

18 Q. When did you get the -- is it
19 called a grade four waters operators
20 certificate?

21 A. I believe.

22 Q. When did you receive it?

23 A. 1991, I think.

1 you volunteer for Iraq?

2 A. I was assigned.

3 Q. So when you were hired on they
4 could assign you where you were needed, but you
5 knew it would be in the middle east?

6 A. That's correct.

7 Q. I took your application and I made
8 a list of the places that you listed that you
9 had worked, and I want to go through them with
10 you and ask you some specifics about them. The
11 first place that you have listed was Mobile
12 Water System where you were an operator.

13 A. That's correct.

14 Q. Approximately what years was that?

15 A. 1970 to 1973 or '74 I believe,
16 sir.

17 Q. And you were an operator there?

18 A. Yes, sir.

19 Q. Was there any similarity between
20 that job with the Mobile Water System and your
21 position with the Auburn Water Board?

22 A. They were both water-related jobs.

23 Q. Did you have any supervisory

1 authority at the Mobile Water System?

2 A. I supervised only my shift.

3 Q. How many would have been on your
4 shift?

5 A. Just one other man.

6 Q. What would that person's position
7 have been that you supervised?

8 A. He would have been an operator's
9 assistant or an operator himself, trainee
10 possibly -- they are different people from time
11 to time.

12 Q. Would that be somebody that's
13 permanently assigned to your shift, or if
14 somebody needed training they may work with you
15 on job training for a period of time and then
16 move on to something else?

17 A. That's possible.

18 Q. Did you generally work that shift
19 by yourself as an operator?

20 A. No, sir.

21 Q. You almost always had somebody
22 with you?

23 A. Yes, sir.

1 Q. And then your next position was
2 with the, according to this -- and you correct
3 me if I'm wrong -- the City of Saraland.

4 A. I believe I worked for the City of
5 Prichard before that.

6 Q. Okay. What did you do for the
7 City of Prichard?

8 A. Shift operator.

9 Q. Is that similar to what you did at
10 Mobile?

11 A. Yes, sir.

12 Q. Any significant difference in the
13 responsibilities?

14 A. No, sir.

15 Q. What years were you at Prichard?

16 A. 1974 to 1975, I believe and maybe
17 '76, I'm not sure.

18 Q. Did you supervise anybody at
19 Prichard?

20 A. No, sir.

21 Q. Did you have any budget
22 responsibilities at Prichard?

23 A. No, sir.

1 Q. Did you have any administrative
2 responsibilities at Prichard?

3 A. No, sir.

4 Q. Were you in charge of the
5 scheduling at Prichard?

6 A. No, sir.

7 Q. And I assume you didn't have any
8 authority to discipline employees?

9 A. No, sir.

10 Q. Why did you leave Prichard?

11 A. Got an offer in Saraland.

12 Q. How large a system was the Mobile
13 Water System in '70 and '74 compared to the
14 Auburn Water Board System when you worked at
15 Auburn?

16 A. I believe the Mobile Water Service
17 water was probably making about thirty million
18 gallons a day. I think when I left Auburn it
19 was problem making eight, average.

20 Q. Eight?

21 A. Six to eight.

22 Q. How many employees total would
23 there have been in Mobile?

1 Mobile County Water, did they fall under a
2 personnel plan or policy where they were
3 entitled to a due process hearing similar to a
4 city?

5 A. They were entitled to due process.

6 Q. Did the Mobile County, Sewer and
7 Fire, did you rely on the Mobile City personnel
8 or Mobile County personnel?

9 A. No, sir.

10 Q. You had your own personnel system
11 there?

12 A. Essentially, correct.

13 Q. Was there an HR department or
14 personnel department?

15 A. I actually was most of the HR --
16 me along with an office employee.

17 Q. My notes say that you left there
18 because you had a nonwork-related injury?

19 A. That's correct.

20 Q. What happened with that?

21 A. Well, I had some problems with one
22 of my feet and I had to have surgery and ended
23 up being unable to walk for an extended period

1 of time.

2 Q. Did they ask you to resign, or did
3 you voluntarily resign?

4 A. I voluntarily resigned.

5 Q. Then the next place that I have
6 that you worked was the City of Jackson.

7 A. That's correct.

8 Q. How long were you unemployed
9 between leaving Mobile County Water, Sewer and
10 Fire and going with the City of Jackson?

11 A. About eight months as I recall.

12 Q. Did you get unemployment
13 compensation?

14 A. No, sir.

15 Q. Did you even apply for it?

16 A. No, sir.

17 Q. And your position with the City of
18 Jackson was plant superintendent?

19 A. Yes, sir.

20 Q. And that was, I guess, directly --
21 you were an employee of the City of Jackson?

22 A. That's correct.

23 Q. Did it have a separate water

1 Q. Do you have any reason to think it
2 came just to you, or did it go to all
3 applicants?

4 A. I assume it went to all
5 applicants -- I don't know.

6 Q. You didn't ask for it?

7 A. No, sir.

8 Q. It just came telling you there had
9 been a pay scale reduction?

10 A. That's correct.

11 Q. Did it tell you the reason for the
12 pay scale reduction?

13 A. I don't recall.

14 Q. Any other statements that you are
15 aware of?

16 A. No, sir.

17 Q. And you don't have any statements
18 of Rick McCarty taped, written, recorded without
19 his permission?

20 A. No.

21 Q. Just to be clear, my understanding
22 is that you were hired as a water plant operator
23 by the water board?

1 A. That's correct.

2 Q. And your employer was the water
3 board?

4 MR. COOKS: Object to the
5 form. You can answer.

6 A. Yes.

7 Q. (Mr. Morgan) How did you find
8 out, or what caused you to make application for
9 the Auburn Water Board?

10 A. Alabama State Employment.

11 Q. They would give you -- I guess you
12 were receiving unemployment compensation?

13 A. That's right.

14 Q. And they would give you a list of
15 possible job openings in your area of expertise?

16 A. That's correct.

17 Q. Did you apply anywhere else other
18 than the Auburn Water Board?

19 A. I applied some other places, I
20 don't recall specifically -- there is one in
21 Elmore County -- I don't know.

22 Q. Was it a water board position as
23 well?

1 hourly salary was.

2 A. He told me.

3 Q. And that's what you were making as
4 the chief operator?

5 A. That's what I was making as a
6 shift operator. Allen replaced me as a shift
7 operator.

8 Q. Is a shift operator the same as a
9 water operator?

10 A. Yes, sir.

11 Q. Water plant operator?

12 A. Yes, sir.

13 Q. And you got promoted?

14 A. Yes, sir.

15 Q. And you went to chief operator?

16 A. That's correct.

17 Q. How much were you making as chief
18 operator?

19 A. I believe it was about sixteen
20 dollars an hour.

21 Q. Is that what you were making when
22 you left the employment of the board?

23 A. I know it was between sixteen and

1 seventeen dollars an hour when I left -- I don't
2 recall exactly.

3 Q. And you were hired in August of
4 '99?

5 A. That's correct.

6 Q. And Allen was hired sometime in
7 '06?

8 A. That's correct.

9 Q. So on the second meeting with Rick
10 and Tony is when you were made a job offer at
11 ten dollars an hour?

12 A. Correct.

13 Q. And did you accept that?

14 A. Yes, I did.

15 Q. What other benefits did you have
16 other than the ten-dollars-an-hour salary?

17 A. Of course the State Retirement
18 Program, which I had to contribute to and health
19 insurance.

20 Q. Did you have to pay for your
21 health insurance?

22 A. Yes, sir. I had to pay a small
23 amount. It was fairly inexpensive.

1 Q. So retirement and medical
2 insurance?

3 A. That's correct.

4 Q. And then you began your job as a
5 water plant operator?

6 A. That's correct.

7 Q. Which I think you held that
8 position until early December of '05 when you
9 became chief operator?

10 A. Okay.

11 Q. Does that sound about right?

12 A. I think so.

13 Q. So you would have been almost
14 eight days shy, if my math is right, of being 51
15 when you were hired by the City, right at 51
16 when you were hired by the City?

17 A. Right.

18 Q. What were your duties and
19 responsibilities as a water plant operator?

20 A. Well, to produce water for the
21 City, operate the pumps, chemical feeders, make
22 sure the process is working correctly.

23 Q. Do you do any sampling as a water

1 A. That's right.

2 Q. Was anybody else that you were
3 working with you named Martin, Steve did they
4 have a plumber's license?

5 A. No, sir.

6 Q. Just generally, tell me what you
7 do, or what you did as a water plant operator.
8 Take me through a day. Tell me generally what
9 you would do during a day.

10 A. Well, I would go in and check the
11 levels, the tank levels and I would turn on the
12 remote, the gauges we have, decide how many
13 pumps to run, how much chemicals to feed, look
14 at the filters to see which filters needed to be
15 back washed, make sure all of the chemical tanks
16 were full -- that's basically it. Check it
17 every hour as we went along during the day and
18 make whatever adjustments were necessary to
19 increase or decrease the flow.

20 Q. Who was your supervisor? Who did
21 you report to?

22 A. Rick McCarty.

23 Q. Did you supervise anybody?

1 A. No, sir.

2 Q. Did you have any contact with the
3 public?

4 A. No, sir, rarely.

5 Q. Were you responsible for any
6 administrative functions as a water plant
7 operator?

8 A. Only for tourists or either
9 students or regulatory agencies.

10 Q. I guess Rick would be the person
11 who was actually responsible for the paperwork
12 being submitted to the state or whoever?

13 A. Each operator did paperwork on his
14 own shift -- he had to do his paperwork. And
15 the man at the end of the day did the paperwork
16 for everybody of the day.

17 Q. The last shift?

18 A. That's correct.

19 Q. And then it would go to Rick?

20 A. That's correct.

21 Q. And are those kept on file in case
22 the city or state wants to come by and make an
23 inspection, or is there a report generated from

1 that?

2 A. It's -- the information is entered
3 directly on the report. And while I was there I
4 kept copies, I don't know what Rick does with
5 them.

6 Q. You didn't have any budget
7 responsibilities, did you?

8 A. No, sir.

9 Q. And you were not responsible for
10 scheduling?

11 A. No, sir.

12 Q. And didn't have any areas -- no
13 disciplinary action -- you didn't take any
14 disciplinary action over employees?

15 A. No, sir.

16 Q. Do you move up from water plant
17 operator? Like sometimes you will be a one or a
18 two, or every six months or a year you get a
19 merit raise or cost-of-living raise, did you get
20 various raises during the time you were a water
21 plant operator?

22 A. I did get raises during that
23 period of time whenever there was a blanket

1 A. That's correct.

2 Q. And what would the other two be?

3 A. Maintenance personnel.

4 Q. Did the shifts rotate? Did one
5 person work only at night and one person during
6 the day, or did your shifts rotate?

7 A. They rotated.

8 Q. And then in December of '05,
9 according to my records, you were promoted to
10 chief operator?

11 A. That's correct.

12 Q. What did you do to be promoted?

13 A. I applied for the position and I
14 was the only one to apply for the position, is
15 my understanding.

16 Q. And that was to chief operator?

17 A. That's correct.

18 Q. Now was that advertised as an
19 in-house promotion, or did they solicit
20 applications from outside of the water board?

21 A. My understanding was that it was
22 in-house.

23 Q. So any water plant operator could

1 have applied for that position?

2 A. That's correct.

3 Q. And that would have included Steve
4 and Martin at the time?

5 A. That's correct.

6 Q. Any others?

7 A. Terry Coats.

8 Q. Did you have to take a test or
9 anything, or did you just make an application?

10 A. I did an interview.

11 Q. Who was your interview with?

12 A. With Rick, Tony, and Eric again --
13 same three people.

14 Q. Was Scott involved with the water
15 board at that time?

16 A. I think he may have been, but I
17 didn't know him.

18 Q. I'm assuming that Rick reported
19 administratively to Tony?

20 A. That's correct.

21 Q. Who did Tony report to?

22 A. To whoever was the
23 superintendent.

1 Q. What did he tell you?

2 A. Just congratulations -- you are
3 the new chief operator beginning some date --
4 gave me the date.

5 Q. And I assume that was an increase
6 in pay?

7 A. Yes, sir, it was an increase in
8 pay.

9 Q. What about duties and
10 responsibilities? What's the significance
11 between what you were doing as a water plant
12 operator and what you now did as a chief
13 operator?

14 A. I had duties also outside of the
15 fence, outside of the wall -- more than just the
16 plant themselves.

17 Q. What duties did you have outside?

18 A. Distribution, system sampling, the
19 raw water pumping station.

20 Q. What would you do there?

21 A. More or less check it.

22 Q. And then you would do sampling
23 outside?

1 A. Yes, sir.

2 Q. Would your principal place of
3 business still be the water plant and if you
4 needed to you would travel to these other
5 places?

6 A. Yes, sir.

7 Q. How about your work days, did it
8 change the hours?

9 A. It changed for the most part so
10 that I was only working five days a week, eight
11 hours a day except when I had to fill in for any
12 operator that took off, which was fairly
13 frequently.

14 Q. Well, let's say you were not
15 filling in and you had a five-day, eight-hour
16 work day, what were your hours?

17 A. Well, they were somewhat
18 flexible. Generally from six in the morning
19 until four in the afternoon, but sometimes I had
20 to go in later and work late.

21 Q. I assume if you filled in you fell
22 in the same rotation as the person whose place
23 you took?

1 A. That's correct.

2 Q. And did the same responsibilities
3 that you had as a water plant operator?

4 A. That's correct.

5 Q. But as the chief operator you had
6 responsibilities outside the facility?

7 A. That's correct.

8 Q. Were there any changes in the
9 responsibilities that you had inside the
10 facility as a chief operator?

11 A. I did maintenance work when I
12 wasn't filling in or working outside the
13 facility.

14 Q. And you reported to who
15 administratively?

16 A. Rick.

17 Q. So you would have been 57 then
18 when you were promoted to the chief operator?

19 A. I believe that's correct.

20 Q. Did you have any supervisory
21 responsibility as the chief operator?

22 A. No, sir.

23 Q. Did you have any contact with the

1 public?

2 A. Yes, sir.

3 Q. What contact did you have with the
4 public?

5 A. Sampling at homes and businesses
6 around the community, and discussing water
7 problems, water issues that customers might be
8 having.

9 Q. Did you have any responsibilities
10 in terms of disciplinary action with other
11 employees?

12 A. No, sir.

13 Q. Did you have any administrative
14 duties?

15 A. Just filing the reports.

16 Q. Did you have any budgetary
17 responsibilities?

18 A. No, sir.

19 Q. Were you responsible for any
20 anybody's work schedule?

21 A. No, sir.

22 Q. Going back to the contact with the
23 public, how would you be advised or learn that

1 there was a complaint or a sampling that needed
2 to be done?

3 A. Get it from a telephone call that
4 was routed to the facility, or directly if
5 someone called the facility occasionally by
6 Mr. McCarty.

7 Q. Explain to me why you would go out
8 and take a sample from somebody's home. They
9 were making a complaint about a water issue?

10 A. It's required. The State requires
11 that a given number of distribution system
12 samples are collected every month, more or less
13 at random.

14 Q. So by State requirement you would
15 go out and sample a certain number of homes each
16 year?

17 A. Correct.

18 Q. I'm sorry, each month?

19 A. Each month.

20 Q. And did you deal with the person
21 or would you take the water sample -- where
22 would you get the water sample from?

23 A. Well, I would get it at the most

1 taste and odor complaints?

2 A. Well they never use water from a
3 particular faucet, and all of a sudden they
4 start using that faucet the water is going to be
5 stale. Some hot water heaters will generate
6 hydrogen sulfide as they are heating the water,
7 and we'll get other problems from hot water and
8 not from cold water.

9 Q. And how about discoloration?

10 A. May have, it's a possibility,
11 discoloration.

12 Q. Just sitting up in there for a
13 while?

14 A. That's correct.

15 Q. And so your best estimate is that
16 you may have handled a handful of those kind of
17 complaints outside of the office where you dealt
18 with the public?

19 A. During the period I was chief
20 operator, yes.

21 Q. Any other reason or occasion where
22 you would deal with the public or a customer,
23 other than the ones we've just talked about?

1 A. No, sir, not unless it's just a
2 casual contact and somebody asked me a question
3 about their water.

4 Q. How did you learn about the
5 opening or vacancy to the water distribution
6 manager position?

7 A. I came in one morning and was told
8 that Tony had resigned, was going to another
9 job.

10 Q. Where did he go?

11 A. I believe he went to -- whatever
12 it is over in Valley, Alabama. It's a water
13 authority -- I don't know the name.

14 Q. Did you know he was leaving before
15 he resigned?

16 A. I was told about a week before he
17 resigned that he was going to resign.

18 Q. Did he tell you that or you just
19 heard that scuttlebutt?

20 A. Rick McCarty told me that.

21 Q. What was the reason that you were
22 told Tony left?

23 A. More money.

1 Q. And then you testified earlier you
2 received an e-mail from Nell about the change in
3 the salary.

4 A. That's correct.

5 Q. Was that part of this delay and
6 change in the job description?

7 A. I only know that there was a
8 delay.

9 Q. Was it during this delay period
10 that you received a change about the salary?

11 A. It may have been, I'm not certain.

12 Q. Tell me what Tony did when he held
13 the position of distribution manager. What did
14 he do? What were his day-to-day activities?

15 A. I don't know his day-to-day
16 activities because he worked at one office and I
17 was working at the water plant.

18 Q. He was not at the plant?

19 A. Rarely at the plant. He made an
20 occasional visit maybe four or five times in the
21 period that I worked there.

22 Q. In the, what, over six years that
23 you were there?

1 A. Yes, sir.

2 Q. Is it fair to say that you did not
3 have frequent interaction with Tony?

4 A. Rarely. My interaction was mostly
5 limited to him calling and saying the water is
6 going to be off, or you need to make more water,
7 or whatever because we are doing something.

8 Q. So you cannot really describe what
9 his day-to-day responsibilities would have been?

10 A. I can't tell you what his day was
11 like. I do know what it takes to manage a water
12 distribution system.

13 Q. Tell me when there was a delay in
14 the promotion process, and they took out the
15 water plant part as you understand it of what
16 Tony did, I guess Rick McCarty continued to
17 handle the water plant part?

18 A. That's correct.

19 Q. What was the other part that was
20 left that Tony did that would have been the
21 subject of the promotion to water distribution?
22 What else did he do?

23 A. Well, that would be the actual

1 day-to-day operation and maintenance of the
2 distribution system, including water line
3 repairs, extensions, meter readings, and
4 whatever other maintenance cleaning lines or
5 fire hydrants that needed to be done.

6 Q. As I understand your answer, you
7 don't know specifically what Tony did in terms
8 of those responsibilities?

9 A. No, sir, I don't know what he did.

10 Q. Going back to your certifications,
11 do you know whether or not to do those other
12 functions that became the subject of the
13 promotion, not the water plant but the other
14 areas, did you need a grade -- would a person
15 need a grade-four water operator's certificate
16 to do those, or do you know?

17 A. No, sir. They would not need a
18 grade-four level -- they would need a
19 certificate.

20 Q. And you wouldn't need a waste
21 water operator's certificate to do those?

22 A. You wouldn't need it if you were
23 restricted to the water distribution system. My

1 (Lunch break.)

2 1:14 PM

3 Q. (Mr. Morgan) You had printed off
4 the application for the position off the web
5 site and filled it out, and then delivered it
6 that day?

7 A. Yes, sir, along with my resume.

8 Q. And then there was a delay, which
9 apparently was a result of, I'm going to say,
10 dividing up not necessarily but changing some of
11 the responsibilities that Tony may have had --
12 taking those sort of backing them out and I
13 guess Rick was going to do part of it -- and
14 that left open the distribution part that
15 remained as part of the promotion procedure as
16 you understood it. Is that true?

17 A. I believe that's true. As far as
18 I know, that's true.

19 Q. And then you received information
20 about a decrease in the proposed salary, I
21 guess?

22 A. Yes, sir.

23 Q. And then what's the next thing

1 that happened in terms of the promotion
2 procedure?

3 A. Well, I had gallbladder problems
4 and had some time off and had gallbladder
5 surgery. During that time I had received a
6 notification that my application had been
7 received by the City of Auburn. I then got a
8 telephone call asking me to report for an
9 interview, and I reported for the interview the
10 very day I returned to work after my surgery.

11 Q. And that was in April that you had
12 the interview?

13 A. I believe that's correct.

14 Q. Do you remember what day in April?

15 A. I don't recall.

16 Q. I guess when the telephone call
17 that you had received informing you about the
18 interview that you were off work?

19 A. Yes, sir, I was at home.

20 Q. And that would have been, I guess,
21 sometime in March?

22 A. Yes, sir.

23 Q. Well, did that create any problem

1 for you being interviewed the day that you came
2 back?

3 A. Well, I don't think it necessarily
4 created a problem for me. I wasn't my hundred
5 percent self, but other than that...

6 Q. Well, did you ask them to ask
7 anybody to reschedule you?

8 A. No, sir, I didn't.

9 Q. Did you verbalize to anybody that
10 was on the interview committee that you were
11 just returning for the first day?

12 A. Yeah, I started saying that and
13 Scott shook his head no, so I wasn't supposed to
14 say that, so I didn't -- I stopped.

15 Q. What did you start to say?

16 A. I said this is my first day back
17 at work I just had gallbladder surgery -- and
18 then he cut me off, so I stopped.

19 Q. Well, what did he do to cut you
20 off?

21 A. Just no, like, you're not supposed
22 to say that.

23 Q. Did he say no?

1 A. Right.

2 Q. Did you stay in the hospital any
3 overnight or was it outpatient?

4 A. It was outpatient, but I had to
5 return that night. I had the surgery in the
6 morning, was sent home and then I had to return
7 that night.

8 Q. Do you remember how many people
9 were on the interview committee?

10 A. I believe there was six or seven.

11 Q. I'm going to ask you about these
12 people: Scott Cummings was on the interview
13 committee?

14 A. Yes, sir.

15 Q. And you knew Scott?

16 A. Yes, sir.

17 Q. Do you know how old Scott was at
18 the time?

19 A. No, sir.

20 Q. Eric Carson was on the interview
21 committee?

22 A. Yes, sir.

23 Q. And you knew Eric Carson?

1 A. Yes, sir from my previous two
2 interviews.

3 Q. And he works for the board.

4 A. Yes, sir.

5 Q. Do you know how old he was at the
6 time of the interview?

7 A. No, sir.

8 Q. And then there was a Michael
9 Thompson. Do you know Michael Thompson?

10 A. I don't know who he is. The name
11 sounds familiar, but I don't know who he is.

12 Q. Do you know how old he is?

13 A. No, sir. There were two younger
14 men on the board that I would say in their late
15 20s, but I don't know.

16 Q. And then Derrick Godfrey works for
17 the board, do you know him?

18 A. I don't know him.

19 Q. Do you know how old he is?

20 A. No, sir.

21 Q. And then Charles Howard worked for
22 the board, do you know him?

23 A. I don't know him.

1 Q. And do you know how old he is?

2 A. No, sir.

3 Q. And then there was a Jill Holland?

4 A. Yes, sir.

5 Q. Do you know her?

6 A. I know who she is.

7 Q. Do you know how old she is?

8 A. No, sir, I don't know.

9 Q. And Kathy Bullard, do you know
10 her?

11 A. I don't know her, but I believe
12 she's the lady that was sitting right next to
13 me.

14 Q. Do you know how old she is?

15 A. No, I don't.

16 Q. Do you know whether or not any of
17 the people on the interview committee were in
18 their '50s?

19 A. I would think that the last lady
20 you mentioned probably was, but that's a guess.

21 Q. How long did the interview last?

22 A. I think it was 30 minutes, 20
23 minutes -- 30 minutes, somewhere in that area.

1 A. Well, I can't recall all of the
2 questions right now. I just -- I think some
3 were asking about my -- well, I can't think --
4 no, I'm sorry I just can't recall any right now.

5 Q. Do you recall admitting during the
6 interview that you had not read the job
7 description?

8 A. I do recall that I had not read
9 the revised job description, because it came out
10 while I was on sick leave.

11 Q. Well, did you read the first job
12 description?

13 A. Yes, sir.

14 Q. But didn't read the revised one?

15 A. That's correct.

16 Q. Well at the time that you made
17 application and had the interview, what was your
18 understanding as to what you would be doing if
19 you were hired as the water distribution
20 manager?

21 A. I would be interfacing with the
22 office staff to process work orders, which would
23 be customer complaints, new services, meter

1 A. That's correct.

2 Q. Do you recall admitting during
3 your interview that you were weak on paperwork
4 and documentation?

5 A. No, sir, I never said that.

6 Q. Did you say anything similar to
7 that?

8 A. I said -- when they -- they said
9 what is your weakest area? I said I don't have
10 any weak areas. And they said, if you had to
11 name one. And I said I hate doing paperwork and
12 I assume things that you don't like doing are
13 probably the things that you don't do as well,
14 but I also -- and I said but -- I use computers
15 a great deal and that makes up for the paperwork
16 and cuts way down on it.

17 Q. As we sit here today are there any
18 other questions that you can think of that you
19 were asked or any other information that you
20 provided the interview committee?

21 A. I remember being asked to
22 categorize some things in order of importance,
23 but I don't remember specifically what they

1 were, like customer service and employees and
2 things like that. I remember being asked
3 several questions about contractors, but there
4 was no delineation of what they meant by
5 contractors -- whether it was contractors
6 working for the water board, or contractors
7 developing, or contractors building houses.
8 There was no identification as to what type of
9 contractor they were talking about.

10 Q. What kind of questions were you
11 asked about the contractors?

12 A. I don't remember specifically. I
13 think they were saying that they had a lot of
14 problems with contractors in the area -- I don't
15 know what that means.

16 Q. Did you ask them which kind of
17 contractor they were talking about?

18 A. I didn't ask, because as long as I
19 wasn't asked a question about what they were
20 doing specifically -- I didn't ask.

21 Q. Well, what was the nature of the
22 question: How well do you get along with
23 contractors? Can you handle contractors? I

1 mean, what do you recall the question being?

2 A. It was something of that sort:

3 Can you work with contractors? Well, yeah, I've
4 worked with contractors for many, many years,
5 all types of contractors.

6 Q. Where all have you worked with
7 contractors?

8 A. Well, I had a great deal with -- I
9 worked with contractors at Mobile County Water,
10 Sewer and Fire Protection Authority. We did
11 some major expansion while I was there, so that
12 was our contractors. We dealt with house
13 builders and land developers all of the time.
14 It's just a matter of course.

15 Q. How about with the City of Jackson
16 Water Board or Professional Services Group, did
17 you work with any contractors there?

18 A. Yes, sir, I sure did.

19 Q. What would be the nature of
20 working with contractors with Professional
21 Services Group when you were in Demopolis?

22 A. We had land developers there. And
23 we had a little bit of expansion of our own, but

1 mostly land developers and house builders.

2 Q. How about Jackson Water Board?

3 A. Again, mostly land developers and
4 house builders. Most of the expansion we did,
5 we did on our own, in-house labor.

6 Q. Now, in your complaint you allege
7 that when you entered the room one of the
8 individuals began shaking his head no and made
9 negative gestures and comments during the
10 interview?

11 A. Correct.

12 Q. I assume that was a male?

13 A. Yes, sir.

14 Q. Who is that person?

15 A. I don't know the man's name. He
16 was a younger man. He was sitting around in the
17 middle of the table to my left near Scott
18 Cummings.

19 Q. Was he black or white?

20 A. White.

21 Q. And you know it wasn't Scott or
22 Eric?

23 A. No, sir.

1 A. No, I don't.

2 Q. Anything else you can remember
3 other than he appeared to be stout?

4 A. No, sir.

5 Q. Did he ask you a question?

6 A. No, sir, he never asked a
7 question.

8 Q. Well, there were, I guess, two
9 white males there that, from your testimony, you
10 didn't know: Michael Thompson and Derrick
11 Godfrey. Did either of those ask you questions?

12 A. Yes, sir.

13 Q. One of them asked you questions?

14 A. Yes, sir. One asked me questions
15 regarding the computer software that I was
16 familiar with, which is an extensive list.

17 Q. And then the other one is the one
18 that you say was shaking his head no and making
19 negative gestures?

20 A. That's correct.

21 Q. Because he did not ask you
22 questions?

23 A. I don't recall him asking any

1 questions, no, sir.

2 Q. Did you ask him why he was shaking
3 his head no?

4 A. No, sir, I didn't.

5 Q. Well, did anybody articulate any
6 reason why this person would be shaking his head
7 no?

8 A. No, sir.

9 Q. And you say throughout the
10 interview he made negative gestures?

11 A. Well, he was just constantly
12 hanging his head down and shaking his head no,
13 and looking around and shaking his head no and
14 looking around.

15 Q. Do you have any idea why he would
16 be doing that?

17 A. I assume it meant that he didn't
18 like me, but that's an assumption.

19 Q. Nobody's ever given you any reason
20 if that happened, why that happened?

21 A. No, sir.

22 Q. Did you ever talk to Scott or Rick
23 or anybody about that?

1 A. No, sir.

2 Q. How did the interview conclude?

3 A. I'm not sure.

4 Q. Well, I mean, were you satisfied
5 with the way it went? Unhappy with the way it
6 went?

7 A. Well, I don't know. I felt like I
8 had made a good representation of myself. I had
9 a closing statement in which I said that I had
10 already been with the company for a long time
11 and they knew the quality of my work and that
12 I'd like to get the promotion.

13 Q. Had you had any disciplinary
14 actions, reprimands, or write-ups up to that
15 point as an employee?

16 A. No, sir.

17 Q. Now as you've articulated what you
18 understand that job involved, was there anything
19 from your position as chief operator that you
20 thought would provide a good background or was
21 similar to the new position that you were trying
22 to get?

23 A. My knowledge of water would have

1 been a great asset dealing with customer
2 complaints. The fact that I had previously, in
3 other jobs, handled billing systems and computer
4 networks and things of that sort, I also felt
5 that would help me to contribute to the overall
6 welfare of the operation.

7 Q. How about in your position as
8 water plant operator -- was there anything in
9 that position that you thought provided a good
10 background, would have been an asset for the
11 position you were trying to get?

12 A. My reliability and dedication to
13 the job, the fact that I knew the capacity and
14 the quality of the water that we were producing
15 and delivering to the citizens of Auburn.

16 Q. How about in any of your prior
17 jobs that you had before you came with the water
18 board?

19 A. I think in all of my -- well, in
20 most of my prior jobs the distribution system
21 had always been part of my responsibility.

22 Q. Now let me ask you a question this
23 way: In terms of your duties as chief operator,

1 A. There would have been that, there
2 would have been customer complaints, there would
3 have been expansion projects that he would need
4 to review and comment on.

5 Q. What's the next step that happened
6 after your interview? What happened next in
7 terms of the promotion procedure?

8 A. Well, again, there was a long
9 delay and I didn't hear anything for a while.
10 And I found out that someone had been hired for
11 the position, unofficially when I went into work
12 way day. One of the other operators told me
13 that someone has been hired.

14 Q. Who is that?

15 A. Who?

16 Q. Told you.

17 A. Martin Squires, I believe, is the
18 first to tell me that.

19 Q. Did he tell you how he knew?

20 A. He said Rick McCarty told him.

21 Q. Did he tell you who had been
22 hired?

23 A. He didn't know the man's name. He

1 said that he understood that he was working at a
2 store in the area and had no water experience at
3 all.

4 Q. Anything else that Martin Squires
5 told you initially about the hire?

6 A. I believe he told me that he
7 worked at a grocery store or that he thought he
8 had worked at a grocery store -- I believe
9 that's what he told me -- the he thought he
10 worked at a grocery store or a meat store or
11 something of that sort.

12 Q. And that's the first word that you
13 heard?

14 A. That's correct.

15 Q. Did Martin tell you when he found
16 out?

17 A. No, sir.

18 Q. What did you do with that
19 information?

20 A. I waited for Rick McCarty to come
21 to work.

22 Q. And did you talk to Rick that
23 day?

1 A. Yes, sir, I did.

2 Q. What was y'all's conversation?

3 A. The conversation was that someone
4 had been hired and he had no experience, but he
5 was a younger man and there was going to be a
6 stiff learning curve on this new job, and so
7 they felt like he would be a better fit.

8 Q. Now, did Rick refer to him as a
9 younger man?

10 A. Yes, sir.

11 Q. He used those words?

12 A. Yes, sir.

13 Q. Did he tell you how he knew that?

14 A. No, sir, he didn't.

15 Q. Did Rick know who he was?

16 A. I don't believe he told me his
17 name. I don't know if he knew it or just didn't
18 tell me.

19 Q. How did he know he was a younger
20 man?

21 A. I don't know.

22 Q. Now, on your application for that
23 position, isn't it true there was nowhere to put

1 your age or date of birth?

2 A. I don't recall that -- probably
3 not -- I don't recall.

4 Q. And Rick was not on the interview
5 committee?

6 A. No, sir, he wasn't.

7 Q. Do you know of any input that Rick
8 had in terms of the promotion?

9 A. No, sir.

10 Q. Did he make any comments in this
11 conversation where he told you that this was a
12 younger man and there was going to be a stiff
13 learning curve -- did he make any comments that
14 the person who was selected for that position
15 was hired because he was younger?

16 A. No, sir. He just said that that's
17 what he had been told and that I would be a
18 better fit where I was, according to Scott. He
19 said Scott said that -- he was telling me what
20 Scott had said.

21 Q. Did you ask Rick the significance
22 of being told there was a stiff learning curve?

23 A. I gave Rick a quick rundown of my

1 education and my abilities, and I told him I'm
2 just being discriminated against flat-out.

3 Q. In that first conversation you
4 told him that?

5 A. Yes, sir, sure did.

6 Q. Well, what did you understand when
7 Rick said that there was going to be a stiff
8 learning curve? What did you understand that
9 meant?

10 A. Well, I'm not -- at the time I
11 didn't have any idea what that meant, but
12 apparently if you don't know anything at all
13 about the job it's a pretty steep learning
14 curve.

15 Q. Well, why did you think
16 immediately that you were being discriminated
17 against?

18 A. Because I'm not a person that
19 needs -- you don't need to be concerned about a
20 learning curve to me. I'm quite capable of
21 learning things very quickly.

22 Q. Well, assume that's true. Just
23 because they hire somebody else, why does that

1 mean they discriminate against you?

2 A. Well, as I said, I was told that
3 they hired a younger man.

4 Q. By Rick?

5 A. Yes, sir.

6 Q. Who did not elaborate to you that
7 that was the reason the person was hired?

8 A. No, sir, he did not.

9 Q. But you just assumed that at that
10 point?

11 A. I assumed at that point that if
12 they hired a younger man with no experience
13 instead of hiring an experienced older man they
14 were being discriminatory, yes, sir.

15 Q. And do you know how old the person
16 is that was hired?

17 A. No, sir, I don't know his age.

18 Q. Have you ever seen him?

19 A. Yes, sir, I have met him.

20 Q. So what happened after you had
21 this conversation with Rick? What did you do
22 next?

23 A. Rick immediately got on the

1 telephone after I told him that I was being
2 discriminated against, that I felt that I was
3 being discriminated against. He got on the
4 telephone, and then he took his portable phone
5 and left the office and went out back behind the
6 building so that the people in the office
7 couldn't hear what was being said. And then he
8 came back later and told me that Scott Cummings
9 wanted to talk to me.

10 Q. Did you talk to Scott?

11 A. Yes, sir, I did talk to Scott. I
12 believe I talked to him on the telephone just
13 long enough for him to tell me that he wanted to
14 set up an appointment to meet with me.

15 Q. Did y'all set up an appointment?

16 A. Yes, sir.

17 Q. Where was the appointment?

18 A. He came to the water plant where I
19 was working.

20 Q. Who was present during the meeting
21 with you and Scott?

22 A. He closed the door so there was
23 only he and I.

1 Q. And nothing about that meeting was
2 taped, right?

3 A. No, sir.

4 Q. Did Rick tell you he thought you
5 would be a better fit or that Scott had said --

6 A. Scott said that, that's what he
7 said.

8 Q. Did you ask Rick what he meant by
9 that?

10 A. No, sir. At that point I was
11 angry.

12 Q. So what went on in this
13 conversation between and you Scott?

14 A. Scott told me that they had hired
15 this other man because he thought they had -- he
16 had more experience in dealing with the public,
17 which I thought was odd. And he went on to tell
18 me that he wanted to hire someone in this
19 position that would be there for a long time,
20 indicating to me that he thought I was too old.

21 Q. What else was said in that
22 conversation between the two of you?

23 A. I don't recall anything else.

1 There was more conversation, some of it was
2 trivial matters. I believe I explained to him
3 how I happened to be working there in Auburn in
4 the first place and why I had been willing to
5 settle for an operator's job.

6 Q. Well, why had you been willing to
7 settle for an operator's job?

8 A. Well, because I had just gone
9 through a divorce, a lost job and some problems
10 with one of my daughters.

11 Q. But nobody from Auburn promised
12 you anything other than offering you a job as a
13 water plant operator, did they?

14 A. No, they didn't.

15 Q. What was Scott's response to that?

16 A. He just said he wished he'd known
17 all of that earlier.

18 Q. Anything else that y'all talked
19 about?

20 A. Again, we talked about a good
21 bit -- some of the things trivial -- and I don't
22 recall the whole conversation.

23 Q. Why did you think it was odd that

1 Scott said the person that was hired had more
2 experience dealing with the public?

3 A. Well as I said, I've been in the
4 utility business for quite a while. And when
5 you are in the utility business you don't have
6 one or two customers -- you have thousands of
7 customers and you have to deal with some of them
8 all the time -- it's a constant thing.

9 Q. Yeah, but when we went through
10 your employment earlier this morning you didn't
11 indicate that you had any extensive experience
12 dealing with customers.

13 A. As a manager, anything that
14 anybody couldn't handle whether it was in the
15 distribution system, the billing office or even
16 the fire system, I had to handle it. Some of
17 the customers actually would ask to see me when
18 they first came in the door. They didn't want
19 to talk to anybody but the manager.

20 Q. Well, would that have been the
21 case at Professional Services Group?

22 A. Yes, sir.

23 Q. Was that one of the reasons why it

1 lost a contract with Demopolis because the
2 customer complaints were not being handled
3 properly?

4 A. No, sir. As a matter of fact,
5 while I was there we renewed the contract, we
6 went through a three-year contract and renewed
7 the contract again.

8 Q. But you were there when they
9 decided to drop the contract?

10 A. Yes, sir, I was.

11 Q. When he made the statement,
12 according to you, that he wanted to hire someone
13 who would be there for a long time, why did that
14 indicate to you that you were too old?

15 A. Well, I assume that he was saying
16 that I'm too -- he asked -- in fact now that you
17 said that, I do recall. He asked how long it
18 was to my retirement age, so he was definitely
19 aiming that toward my retirement age -- but I
20 recall him asking how long before you are going
21 to be retiring.

22 Q. Now, when did he ask you that?

23 A. Sometime during the conversation.

1 Q. What did you tell him?

2 A. I told him I assumed I would work
3 until I died, I believe.

4 Q. And after that is when you claim
5 he made the comment that he wanted to hire
6 somebody to be there a long time?

7 A. Yes, sir.

8 Q. I want to be clear on this. You
9 said that after you told Scott about why you
10 wound up at Auburn and going through a divorce
11 and a problem you had with your daughter, that
12 he'd wished he'd known that. Did he make any
13 comment --

14 A. He didn't make any further
15 comment.

16 Q. Well, what percent of your job
17 would you say dealt with the public when you
18 worked at Professional Services Group?

19 A. Probably 20 percent.

20 Q. Twenty percent of your time was
21 spent on customer complaints?

22 A. Yes, sir.

23 Q. How about Water Board of the City

1 of Jackson?

2 A. Probably -- well, it varied there
3 because we had some issues where I had constant
4 every day, nothing but customer complaints when
5 I first arrived. We were able to work out those
6 issues, and it settled down after a few months
7 to probably 10 or 15 percent.

8 Q. Did you tell Scott during this
9 first conversation that you thought you were
10 being discriminated against?

11 A. Yes, sir.

12 Q. What did he say about that?

13 A. He didn't make any comment.

14 Q. Did you tell him you planned on
15 suing?

16 A. No, sir, I did not. I did tell
17 him that I thought bad things happen because
18 good people didn't stand up for themselves.

19 Q. What did he say about that?

20 A. He didn't make any comment.

21 Q. What's the next thing that
22 happened? Did you have anymore conversations
23 with Rick or Scott?

1 A. I worked with Rick every day.

2 Q. Did y'all talk about this?

3 A. Scott made several visits to the
4 plant specifically to talk to me and to discuss
5 this, all of the time trying to tell me that I
6 should be happy right where I am.

7 Q. How many conversations did you
8 have with Scott altogether?

9 MR. COOKS: Object to the
10 form. You mean subsequent to the one we just
11 got through talking about.

12 MR. MORGAN: Yeah.

13 Q. (Mr. Morgan) Counting the first
14 one, how many did you have with him altogether?

15 A. Three or four -- I'm not sure --
16 some of them on the phone and two or three here
17 at the plant.

18 Q. And what was discussed in these
19 subsequent meetings?

20 A. As I said he assumed to say that I
21 ought to be quite content where I was -- that I
22 was doing a good job, he was happy with my work,
23 and that I should be happy there.

1 Q. And what would you say to him?

2 A. I said the other job pays twice as
3 much.

4 Q. And what did he say?

5 A. No comment.

6 Q. Well, did he make anymore
7 references -- do you claim he made anymore
8 references in any of these other conversations
9 about retirement, your age, a longtime employee
10 or anything?

11 A. No, sir. The message I got from
12 Rick McCarty was that the Human Resources
13 Department had said that we could no longer talk
14 and discuss the matter.

15 Q. That who could no longer talk and
16 discuss the matter?

17 A. Rick and I, or Scott and I.

18 Q. But you said Scott came out there
19 and talked to you two or three times?

20 A. This was after -- prior to the --
21 what Rick telling me that Human Resources said
22 that we couldn't talk anymore.

23 Q. Were you still employed with the

1 water board when you filed your EEOC complaint,
2 or did you file your EEOC complaint after you
3 left the water board?

4 A. I was still employed with the
5 water board.

6 Q. Well, did you have two or three
7 conversations with Scott in addition with that
8 first one before Rick said y'all couldn't talk
9 about it?

10 A. Yes, sir.

11 Q. Did Scott, in any of those
12 conversations, do you claim he made any
13 statements about your age, or retirement, or
14 younger employee, or working there a long time,
15 or anything in any of those subsequent
16 conversations?

17 A. As I said in the subsequent
18 conversations, he kept trying to convince me
19 that I should be just happy right where I was.

20 Q. So to answer to my question, there
21 were no more comments about somebody being there
22 a long time, or your retirement or anything?

23 A. No, sir.

1 A. Not directly this matter.

2 Q. Well, what indirectly did you
3 have?

4 A. As I said I was told that I was
5 going to have to go out and perform some of the
6 duties.

7 Q. I'm going to get to that in just a
8 minute. How about Scott, anymore conversations
9 with Scott about the promotion and not getting
10 it?

11 A. The same type of indirect
12 conversation.

13 Q. Well, what did Rick and Scott,
14 either one or both, tell you that you had to do
15 that you don't think you should have done?

16 A. I was told that the new man had
17 caused an upset in the water lines in a certain
18 part of town, and that he wasn't qualified to
19 take the samples, and they wanted to take
20 samples out there to assure everyone that the
21 water was safe to drink. As a matter of fact
22 Kyle, himself called me.

23 Q. He talked to you?

1 A. Yes, sir. He told me he needed me
2 to handle the customer complaints.

3 Q. Well, how does Rick get involved
4 indirectly?

5 A. Rick was not present at the time.
6 But I had a raise that I was due, the raise was
7 held up, and a comment on my evaluation was that
8 I failed to cooperate with the distribution crew
9 in collecting samples or something to that
10 effect.

11 Q. And so you discussed it with Rick?

12 A. Yes, sir.

13 Q. Rick never asked you to go do
14 something for the distribution manager?

15 A. No, sir. Rick did not. Rick was
16 not present at the time.

17 Q. Your indirect conversation about
18 all of this was Rick, was your raise held up?

19 A. Rick told me about the problems
20 and the distribution system.

21 Q. That he was upset because there
22 were some water line problems?

23 A. Yes, sir.

1 Q. Rick told you that?

2 A. Yes, sir, Rick told me about the
3 upset in the distribution system. Kyle called
4 me to go out and work on it.

5 Q. What area of town was this?

6 A. I don't know.

7 Q. Well, at what point did Rick tell
8 you that people were upset because of something
9 the distribution person had caused in the water
10 line? Was that when you were talking to him
11 about your raise?

12 A. No, sir. No, sir, he had been to
13 a visit at the office and he came back and said
14 there are some problems in this one subdivision
15 because of a pump that was turned on and the
16 water lines weren't flushed prior to turning it
17 on, and as a result the water is brown all over
18 the neighborhood.

19 Q. Is that before or after Kyle asked
20 you to go ask out and take some samples?

21 A. Kyle called me later that same day
22 telling me he needed me to go out and fix it.

23 Q. So Rick told you about the problem

1 earlier and then Kyle -- well, did Rick say it
2 was Kyle's fault?

3 A. He didn't say whose fault it was.
4 It's a distribution system problem -- it's the
5 distribution system manager's fault.

6 Q. And so Kyle called and asked you
7 to go out and fix it that same day?

8 A. Told me that he needed me to go do
9 this, I was supposed to go do this. I was
10 supposed to go take samples and supposed to go
11 talk to the customers and calm them down. I
12 told him I would have to talk to Scott before I
13 could do that.

14 Q. And that was a conversation that
15 you had directly with Kyle?

16 A. Yes, sir.

17 Q. Rick didn't through some third
18 party, tell you you needed to do that -- Kyle
19 told you you needed to do that?

20 A. Kyle told me that.

21 Q. Why would you have to talk to
22 Scott?

23 A. Because I didn't think it was my

1 duty to go out and do this man's job for him.

2 Q. Wouldn't Kyle have been your
3 superior?

4 A. No, sir. According to -- what I
5 was told the job description was revised to be
6 he had no authority over the water plant.

7 Q. Did you make the comment at that
8 time or later in regard to this request from
9 Kyle that you were not going to be a team
10 player?

11 A. No, sir.

12 Q. You never made the statement that
13 you were not going to be a team player?

14 A. No, sir, I have never made that
15 statement.

16 Q. Did you talk to Scott about it?

17 A. Scott phoned -- well, actually I
18 believe I called Scott and he wasn't in, and I
19 left a message and he called back.

20 Q. What happened when you talked to
21 Scott?

22 A. Told him I didn't think it was my
23 responsibility. It should be the job of the

1 distribution system manager to take care of
2 those problems.

3 Q. What did Scott say?

4 A. Scott said, well, okay if you feel
5 that way fine, and slammed the phone down.

6 Q. So did you do it?

7 A. No, sir. I had already explained
8 to Kyle that I had no transportation. The truck
9 that I normally drove was broke down, I wouldn't
10 have any transportation to get out there.

11 Q. I thought you told Kyle you had to
12 talk to Scott?

13 A. Kyle said he would send somebody
14 to pick me up and take me out there, and I said
15 I'm going to have to talk to Scott first.

16 Q. So it wasn't a matter of
17 transportation, they could have gotten you
18 there?

19 A. No, they could have gotten me
20 there, that's right.

21 Q. You just didn't do it because you
22 didn't get the job.

23 A. Because it wasn't my job to do

1 that. It wasn't my job to do that. My job was
2 to work at the water treatment plant.

3 Q. I thought you said part of your
4 job as a chief operator was to take samples
5 outside?

6 A. That's correct. To take
7 bacteriological samples for the monthly state
8 requirement.

9 Q. So even though this is something
10 that would have been necessary for the proper
11 operation of a water board and distribution of
12 water and that Scott had asked you to do it, you
13 weren't going to do it?

14 MR. COOKS: Object to the
15 form.

16 A. I didn't tell Scott I wouldn't do
17 it. I told him I didn't think it was my
18 responsibility. When he hung -- slammed the
19 phone down in my face -- I assumed he didn't
20 need me to do it.

21 Q. (Mr. Morgan) Is he your superior?

22 A. Yes, sir, Scott is.

23 Q. Is that the way you handle or deal

1 Q. And that would be?

2 A. The fact that someone less
3 qualified was hired because he was younger.

4 Q. Do you know Mr. Hildress'
5 qualifications?

6 A. No, sir.

7 Q. My understanding is your lawsuit
8 is -- your claim of discrimination is that you
9 were not promoted because of your age?

10 A. That's correct.

11 Q. You don't make any other
12 employment claims?

13 A. No.

14 Q. It's a promotion claim?

15 A. That's correct.

16 Q. And the promotion claim is that
17 you didn't get promoted because of your age, or
18 flip-flopping it they promoted a younger person?

19 A. An unqualified person, yes, sir.

20 Q. Anything else that you think Rick
21 McCarty knows about your claim other than what
22 you just told me?

23 A. No, sir.

1 Q. Has he made any comments about
2 Kyle being less qualified?

3 A. He told me that Scott told him on
4 the very first day that the man had no water
5 experience.

6 Q. And that's the basis of saying
7 he's less qualified because he has no water
8 experience?

9 A. Yes, sir.

10 Q. And you said also that Rick told
11 you in that first conversation that Scott said
12 he was younger?

13 A. Yes, sir.

14 Q. Now to be clear, you don't make
15 any claim that Rick knows any first-hand
16 evidence about the reason you were not promoted
17 or that Kyle was promoted?

18 A. I would assume that he knows what
19 Scott told him.

20 Q. Because Rick was not involved in
21 the process?

22 A. Not to my knowledge.

23 Q. And did not make the decision?

1 A. Not to my knowledge.

2 Q. Then you listed Scott Cummings.

3 A. Yes, sir.

4 Q. What do you claim Scott Cummings
5 knows about your lawsuit?

6 A. I think Scott Cummings instigated
7 the discrimination and I think he's entirely
8 responsible for it.

9 Q. Why do you say that?

10 A. Because he was not only the
11 manager, but he led the board -- he made the
12 decision.

13 Q. Anything else that you say Scott
14 knows about this lawsuit?

15 A. None, I don't have anything else.
16 I think he knows everything about it, that's
17 what I think he knows.

18 Q. Martin Squires, you have him
19 listed -- what is it that you think he knows?

20 A. He only knows what he was told.

21 Q. By Rick?

22 A. By Rick.

23 Q. Do you know of anything that

1 I received from her regarding the change, that's
2 all.

3 Q. Do you remember if you were asked
4 by the interview committee anything about your
5 supervisory experience?

6 A. I'm sure I must have been, I don't
7 recall specifically.

8 Q. Do you recall any information or
9 statements that you made to the interview
10 committee about your supervisory experience?

11 A. No, I don't recall any specifics.
12 Most of my work prior to going or being employed
13 at Auburn was supervisory.

14 Q. My question is -- I want to be
15 clear -- I want to know what you remember
16 telling the interview committee about your
17 supervisory experience?

18 A. I don't recall any specifics.

19 Q. Do you remember relating or
20 sharing any information with the interview
21 committee about your handling or experience with
22 customer relations?

23 A. Yeah, I'm sure that that was

1 discussed.

2 Q. What do you remember telling them?

3 A. Well, I think there was some
4 comment about Jill being a very tough person to
5 deal with, and I remember telling them that in
6 Jill's position she has to be a tough person to
7 deal with, because that's one of the things that
8 I used to tell my clerks was you never blink
9 with a customer. You are sympathetic, you
10 listen to what they have to say, but you never
11 say wait a minute did I make a mistake, you know
12 you don't do that. You check -- if you think
13 you made a mistake you stop and you look, and
14 then you go back, but you don't ever blink in
15 front of a customer. Because if you do, you
16 only prolong an argument that you don't have to
17 have.

18 Q. Anything else that you remember
19 discussing with your interview board about your
20 experience with customer relations.

21 A. Just that I had quite a bit of
22 experience with customer relations, dealing with
23 customers in the billing office and in the

1 field.

2 Q. Did you have any conversations or
3 present any information to the interview
4 committee about your experience in managing
5 staff or operations?

6 A. I remember being questioned about
7 the number of employees that I had supervised in
8 the past.

9 Q. What did you tell them
10 specifically about that?

11 A. Well, I just told them basically
12 the same thing today: How many employees that I
13 had worked with at each job.

14 Q. Did they go through the various
15 positions that you've held and ask you about
16 those kind of things that we talked about
17 earlier?

18 A. I don't think we went all the way
19 through the list. I was asked about particular
20 places: How many here, how many there, that
21 kind of thing.

22 Q. Did you provide any information or
23 were you asked any questions or share any

1 A. He said he didn't know what the
2 man had done for a living. It wasn't a personal
3 comment about the man -- I didn't know the man.
4 I was talking about the type of work that he
5 did.

6 Q. Are there any conversations that
7 you've had with Scott about the promotion
8 procedure, your not being promoted, or this
9 lawsuit that we haven't covered in this
10 deposition?

11 A. I don't recall anything. I think
12 we've covered certainly the major issues.

13 Q. Now as to Rick, are there any
14 conversations you had with Rick about this
15 promotion procedure, or your employment, or this
16 lawsuit, or your age that we haven't covered?

17 A. The only thing I think we have not
18 covered was the evaluation where my raise was
19 held up and I had negative comments on my
20 evaluation.

21 Q. Was that after this incident that
22 you told me about with Kyle calling and asking
23 you to take samples?

1 A. Yes, sir.

2 Q. What conversations did you have
3 with Rick about that?

4 A. I told him that it was obvious
5 that this was some retribution because I was
6 objecting to doing another man's job.

7 Q. What did Rick say?

8 A. He didn't really comment. He said
9 well, you know, Norman, Scott put these comments
10 on them, I didn't -- is what he said.

11 Q. Did you get your raise?

12 A. I believe I eventually did get the
13 raise, but it was delayed.

14 Q. And my understanding was you
15 submitted a letter of resignation to the board?

16 A. Yes, sir, I did.

17 Q. At the time you sent that letter
18 of resignation you had already been working with
19 Kellogg, Brown and Root, hadn't you?

20 A. I had accepted a position with
21 Kellogg, Brown and Root, that's correct.

22 Q. Now, tell me what evidence you
23 have that you were denied that promotion because

1 of your age?

2 MR. COOKS: Object to the
3 form.

4 A. I think the evidence is in my
5 background, I think it speaks for itself. I was
6 eminently qualified for the job and I don't
7 think I was ever actually given a chance to be
8 even considered for the position.

9 Q. (Mr. Morgan) Why not?

10 A. As I said when I went in there was
11 one man shaking his head no -- apparently job
12 experience doesn't count for anything. The fact
13 that I had a very positive work record with
14 Auburn didn't count for anything. I was under
15 the impression that there was veteran's
16 preference given to city employees -- Scott
17 tells me he never heard of that. So I felt like
18 I was discriminated against, yes, sir. And I
19 think it's all there in the records in my
20 resume.

21 Q. When did you have the conversation
22 with Scott about the veteran's preference?

23 A. That was one of the conversations

1 he and I had after I didn't get the position.

2 Q. What was said by who?

3 A. I don't recall specifically. I
4 just -- I just -- I remember asking him and is
5 this man a veteran, was he a veteran? Well, no
6 he wasn't a veteran, Norman. And I said isn't
7 there a veteran preference, don't you give
8 veteran's preference. And he said I've never
9 heard of veteran's preference.

10 Q. Anything else that you can
11 remember about any of these conversations with
12 Scott?

13 A. I'm sure that there was a lot
14 discussed and I'm sure that after a year I don't
15 recall everything that was said.

16 Q. Well, have we covered everything
17 that you do remember?

18 A. Yes, sir.

19 Q. Is there anything else that you
20 rely on for your claim that you were not
21 promoted because of your age? Has anybody ever
22 told you you didn't get this promotion because
23 of your age?

1 A. I think Scott told me that when he
2 said he wanted somebody that was going to be in
3 that position for a long time. I think that's
4 exactly what he was saying.

5 Q. Anybody else that you claim made
6 any comments like that other than Scott?

7 A. The comment that Rick said Scott
8 made about there being a steep learning curve.
9 Seemed to me that every excuse they came up
10 with, when I refuted that excuse they had a
11 brand-new one.

12 Q. Well, when you had the
13 conversation with Rick about the steep learning
14 curve, the decision had already been made to
15 hire somebody else?

16 A. Yes, sir.

17 Q. Did you ever discuss that with
18 Scott?

19 A. Yes, sir.

20 Q. What did he say? What was his
21 explanation?

22 A. He dismissed that right off.
23 Apparently that had been communicated back to

1 him in the conversation on the phone he had with
2 Rick, because he just dismissed that right away
3 and didn't say anything else. Then he started
4 talking about this man has had so much more
5 experience with customer relations. And when I
6 dismissed that, when I explained to him that
7 that wasn't the case and proved it to him, it
8 was something else. You know it was just one
9 little excuse after another. But when he told
10 me that he wanted someone in that position a
11 long time that was the reason -- that was the
12 reason.

13 Q. Any other comments made by Scott
14 or anybody else that support your claim?

15 A. I don't recall anything else.

16 Q. Tell me how you claim you've been
17 damaged in this lawsuit. What damages do you
18 seek?

19 A. I've had to leave a secure job, go
20 halfway around the world to be shot at, knowing
21 that it's not a permanent job. I felt like I
22 was being persecuted there where I was. I was
23 not happy because of the things that were being

1 a year I can't be sure of what all I did lose.
2 A lot of the things I had in storage and a lot
3 of the things are packed away.

4 Q. Did you take any of that off of
5 your taxes?

6 A. I have not, no, sir.

7 Q. Do you have a contract with
8 Kellogg?

9 A. Yes, sir.

10 Q. A written contract?

11 A. Yes, sir.

12 Q. How long is the contract for?

13 A. It's a three-year contract -- it's
14 actually one year at a time.

15 Q. Just rolls over?

16 A. Yes, sir.

17 Q. And you are now into your second
18 contract -- second year?

19 A. I will be -- when I go back I will
20 start my second contract -- second year.

21 Q. What was the date of your first
22 year?

23 A. The 18th -- July the 18th.

EXHIBIT “B”

AFFIDAVIT OF STEVE REEVES

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

NORMAN E. LACEY,

Plaintiff,

-vs-

CITY OF AUBURN,

Defendant.

Case No. 3:06-cv-1145-MEF

AFFIDAVIT OF STEVEN REEVES

Before me, the undersigned authority, in and for said county and state, personally appeared Steven Reeves, who being known to me and being first duly sworn, deposes and says under oath as follows:

1. My name is Steven Reeves. I am a 47 year old male and I have personal knowledge of the matters set forth herein.

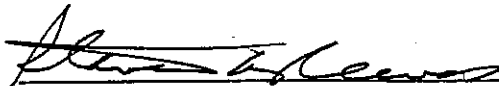
2. I am the Human Resources Director for the City of Auburn.

3. The Water Works Board for the City of Auburn ("the Board") is a public corporation under the laws of Alabama. The City of Auburn provides management services to the Water Works Board pursuant to the attached management agreement, including financial management, human resources management, risk management, information technology and day to day oversight of operations.

Further affiant saith not.


Respectfully submitted this 13 day of December 2007.




STEVEN REEVES

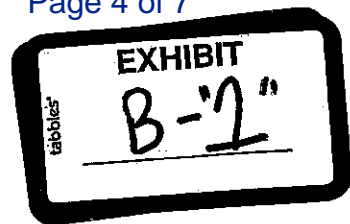
STATE OF ALABAMA)
COUNTY OF LEE)

Before me the undersigned Notary Public in and for State and County aforesaid, personally appeared **STEVEN REEVES**, who is personally known to me and who, being by me first duly sworn, doth depose and say that he signed the above affidavit to the best of his knowledge, information and belief and with full understanding of its effect.


NOTARY PUBLIC

(SEAL)

My Commission Expires: March 2, 2008



STATE OF ALABAMA

LEE COUNTY

MANAGEMENT AGREEMENT

1 This agreement made and entered into on this the 19th day of July, 1983, by and between the City of Auburn, Alabama, a municipal corporation, hereinafter referred to as "City", and The Water Works Board of the City of Auburn, a public corporation under the laws of Alabama, hereinafter referred to as "Board".

STATEMENT OF BACKGROUND INFORMATION

2 1. Board is a separate entity within the City of Auburn which is responsible for the construction, management, administration and maintenance of the water system of the City of Auburn.

3 2. City is a duly incorporated municipality within the State of Alabama.

4 3. The parties do believe that it is in the best interest of the City and the Board and would benefit the citizens of the City of Auburn for the City and the Board to enter into a management contract under which the City would provide certain services to Board, with the Board retaining its autonomy and complete authority for all policy decisions affecting the construction, management, administration and maintenance of the water system of the City of Auburn.

STATEMENT OF AGREEMENT

5 1. The City does hereby agree to accept the management of the water system of the City of Auburn, including but not limited to, all financial, accounting, collection, purchasing and engineering functions necessary to administer and operate the water system of the City of Auburn on a day to day basis under the policy direction of the Board.

- 2 -

6 2. The Board shall be responsible for making all policy decisions affecting the water system of the City of Auburn and the City shall have no authority or jurisdiction to make any such policy decisions.

7 3. All employees of the Board shall remain employees of the Board and be covered by the group medical insurance, life insurance and retirement plans of the Board, except that the employees of the Board shall be subject to the pay plan, personnel rules and regulations and job descriptions adopted by the City. The Board shall retain its' authority to hire, discipline and discharge all employees of the Board.

8 4. The Board does designate the City and its' duly authorized personnel or purchasing agent to purchase all commodities used by the Board and the Board does agree to adopt and follow the standardized purchasing procedures in force from time to time in the administration of the City.

9 5. The Board shall maintain all hazard and liability insurance as now in force and carried by the Board, and in addition thereto, shall obtain and pay the premiums on such fidelity bonds on the employees of the City as may be required by the Board.

10 6. The City shall furnish to the Board a monthly financial report of all income and expenses of the Board by the second Monday of the next following month, and shall make the books and records of all transactions affecting the water system of the City of Auburn available to the Board at any reasonable time during normal business hours.

11 7. The Board shall hold the City harmless for any actions taken by City employees in carrying out the policy directives of the Board.

- 3 -

12 8. The Board shall obtain a fidelity bond on the City's Finance Director in the amount of \$25,000.00 to cover the performance of her duties while she is handling Board funds.

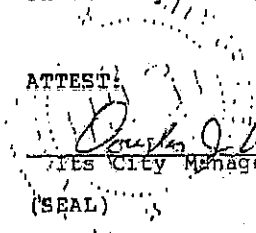
13 9. During the term of this agreement, in order to insure the continued autonomy of the Board, the City does agree that in the appointment of new members to the Board, that it will not appoint sitting members of the Auburn City Council as it may be comprised from time to time.

14 10. This agreement shall be effective as of July 1, 1983, and the City shall cease paying any fees which it is presently paying to the Board effective July 1, 1983.

15 11. This agreement may be terminated by either party hereto who shall give to the other party 120 days prior written notice of its' intent to terminate; provided, however, that this agreement may not be terminated prior to January 1, 1984.

16 IN WITNESS WHEREOF, this agreement has been executed by the parties in duplicate, each of which shall constitute an original, on the day and date first above written.

ATTEST:


Douglas J. Wagon
Its City Manager
(SEAL)

CITY OF AUBURN, ALABAMA,
a municipal corporation

BY:

Sam M. Kempsey
Its Mayor

ATTEST:

W. A. Alexander
Its Secretary
(SEAL)

THE WATER WORKS BOARD OF THE CITY
OF AUBURN, a public corporation

BY:

John C. Bailey
Its Chairman

- 4 -

STATE OF ALABAMA

COUNTY OF LEE

I, Earline S. Cobb, a Notary Public in and for said State and County, hereby certify that Jan M. Dempsey, whose name as Mayor of the City of Auburn, Alabama, a municipal corporation, is signed to the foregoing agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, she, as such Mayor and with full authority, executed the same for and as the act of the City of Auburn, Alabama.

Given under my hand and official seal this the 19th day of July, 1983.

(NOTARY SEAL)

Earline S. Cobb
Notary Public, State at Large

MY COMMISSION EXPIRES:

My Commission Expires
June 23, 1986

STATE OF ALABAMA

COUNTY OF LEE

I, Debra P. Maddox, a Notary Public in and for said State and County, hereby certify that John C. Bailey, Jr., whose name as Chairman of The Water Works Board of the City of Auburn, a public corporation, is signed to the foregoing agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, he, as such officer and with full authority, executed the same for and as the act of The Water Works Board of the City of Auburn.

Given under my hand and official seal this the 12th day of July, 1983.

(NOTARY SEAL)

Debra P. Maddox
Notary Public, State at Large

MY COMMISSION EXPIRES:

MY COMMISSION EXPIRES
FEBRUARY 6th, 1984

EXHIBIT “C”

AFFIDAVIT OF SCOTT CUMMINGS

qualifications reflected in the applications and/or resumes. Some of the other interview committee members helped in this process to select the top candidates based on applications.

4. In preparation for filling the Water Distribution Manager position, I selected a cross section of individuals who would be working with the person awarded the job. The interviewers were as follows: myself, Eric Carson, Mikel Thompson, Charles Howard, Jill Holland, Kathy Bullard and Derek Godfrey. The applicants were asked the same questions. After each interview, there was a discussion regarding the interviewers' observations of the applicants' responses to the questions, the qualifications of the applicant or any other issues that came up during the interview that was relevant to the Water Distribution Manager position. There was no decision made regarding who to hire until the completion of all three interviews.

5. The applications that were submitted for the Water Distribution Manager position did not reflect anyone's age and at no time during the course of the interviews, nor the discussions that followed the interviews, were the ages of the applicants discussed. In fact, at no time during the hiring process for the position in question was the age of any applicant or the age of the person receiving the job discussed.

6. After the interviews were concluded, all of the interviewers participated in a discussion to determine who was the best person for the job. It was a consensus among everyone that Kyle Hildreth was the top candidate based upon the qualifications we were looking for.

7. Mr. Hildreth was selected as the candidate to be placed in the position. Compared to the other two candidates, his qualifications exceeded theirs in crucial areas of concern such as supervisory experience, customer relations, staff management and operations for clients' immediate needs and experience dealing with local contractors. While Mr. Lacey has some supervisory and management experience recorded on his application, this experience and background was not comparable to requirements of the Water Distribution Manager of the Board in terms of customer demands and system size. Also, the two jobs that Mr. Lacey held immediately prior to the promotion in question, Water Plant Operator and Chief Operator, were not in any way similar to what the Water Distribution Manager job entailed.

8. While Kyle Hildreth did not have experience in water distribution, this was not a concern for us because he had many desirable and transferable skills that he had acquired as the manager of a concrete batch plant in Auburn. It is my understanding that in that position, Mr. Hildreth had extensive supervisory responsibilities, scheduling responsibilities and intense project work. It was apparent he could handle a stressful job. The committee simply felt like these qualifications exceeded that of the other two candidates.

9. Additionally, Mr. Hildreth provided a very impressive interview. When answering the questions, he provided responses that were much more in line with what we were looking for than Mr. Lacey or the other candidate. In fact, Mr. Lacey responded poorly to basic questions about the job he was seeking. He admitted in the interview that he had not read the job description. When asked about this, he said that

he understood what the Water Distribution Manager did in the job only to later admit that the water plant (where he worked) was fairly isolated from the other employees and that he, in fact, did not know what the Water Distribution Manager did on a day to day basis. During the course of the interview, Mr. Lacey also admitted that he was weak on paperwork and documentation, which was a concern because of the importance of documentation for the Water Distribution Manager. Mr. Lacey also failed to give a good response to the questions about planning the staff work load for the week. (Interview notes for Mr. Lacey are attached hereto as Exhibit "1").

10. After interviewing Mr. Lacey, I spoke to Mr. Lacey's supervisor in an attempt to gather information about Mr. Lacey's job experience because it did not seem in line with the information or attitude which Mr. Lacey revealed in the interview. I did not feel that I received any information from that supervisor that provided assistance or shed a better light on Mr. Lacey as a candidate for the job.

11. I have always followed the Equal Opportunity Employment policies and worked closely with human resource staff and have never discriminated against any candidate because of their age or for any other reason. I never discussed Mr. Lacey's age with anyone. It was in my best interest to hire the most qualified person for the job in question and I would have never considered the person's age. It is my understanding that Mr. Lacey has said that I talked with him after the interview about wanting to hire a person that would be in the job for a long time and asked him about his retirement. This claim is untrue. Rather, I attempted to talk to Mr. Lacey about how he did during the

course of the interview. I did not compare him to others but tried to focus on areas which were of a concern to the interview committee. At no time have I discussed retirement or how long a person would stay in the job with Mr. Lacey or anyone on the interview committee.

Further affiant saith not.

Respectfully submitted this 14th day of December 2007.


SCOTT CUMMINGS

STATE OF GEORGIA)
COUNTY OF Gwinnett)

Before me the undersigned Notary Public in and for State and County aforesaid, personally appeared **SCOTT CUMMINGS**, who is personally known to me and who, being by me first duly sworn, doth depose and say that he signed the above affidavit to the best of his knowledge, information and belief and with full understanding of its effect.


NOTARY PUBLIC

Reba S. Weir
Notary Public, Gwinnett County
Commission Expires April 9, 2011

(SEAL)

My Commission Expires: _____

Water Distribution Manager Interview

EXHIBIT

C-7"

Applicant Norman Laey

4-7-06

1. What do you feel is most important about this job?

Staff 2
Budget 4
Customers 1
Contractors 3

• Has not read job description
• Know what Tony did

Later stated he did not know how we are structured or how we operate

2. What do you feel is the most important aspect of managing people?

• Listen

How many people have you managed/supervised? - 12 to 15

3. What aspect of management is most difficult for you?

• Separate personal feelings from doing what he knows is right

4. Describe how you plan workload for the day - week?

• Not a very clear response

5. Describe a stressful situation and how you responded?

None mentioned

6. How do you budget/plan resources?

Reactive

→ Proactive

7. Rate your communication skills?

Written } - orderly

Verbal }

Documentation - important

• wants to branch out
• Feels isolated w/ operations

8. What do you feel is the most important aspect of the job for which you applied?

get things going

9. Rate your knowledge of computers and software...

Microsoft Office Products

10. Are you trainable?

yes

11. Are you more comfortable working with...people...independently?

likes to interact but likes to work alone

12. What makes you the most qualified applicant for the position?

Experience in the field

13. Customer complaint situational question....

14. What concerns you about your ability to perform the duties of Water Distribution Manager?

none

Weakness - paperwork / documentation

Water Resource Management Department

Applicant Evaluation Summary

Name of Applicant:	Norman Lacey	Date:	3-16-06
Position Applied for:	Water Distribution Manager	Reviewer:	Scott Cummings

Does the applicant satisfy the minimum criteria described in the job description? Yes

If not, describe what criteria, if any, would qualify the individual based on their qualifications versus the job description. _____

List aspects that are positive concerning the applicant's application/resume.

many years experience in the water / wastewater utility business

List aspects that are negative concerning the applicant's application/resume.

Does not appear to have experience dealing w/ public, scheduling resources, and managing budgets.

Interview? _____ Type: phone/individual/panel (circle all applicable)

List the interview team:

Comments from the interview concerning the applicant's capabilities.

seems to be very orderly & may have difficulty handling the fast paced & sometimes stressful conditions
left all ~~3~~ on the interview team w/ uneasy feeling that he could handle the job.
failed to demonstrate any initiative or motivation for the job
Never talked to me or supervisor about job.

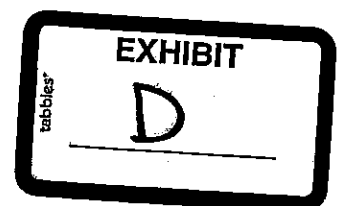
Is this individual the right person for the position? NO

Why/Why Not?

See notes. / Appears to be methodical but did not exhibit ability to lead Auburn into future.
Talked w/ current supervisor about his issues and he could not offer any reason to think otherwise.

EXHIBIT “D”

AFFIDAVIT OF ERIC CARSON



4. Kyle Hildreth was my top choice for the position of Water Distribution Manager. His background made him more qualified based on the criteria we were looking for. He gave the best interview.

5. At no time before, during or after the interview process was the age of any applicant discussed. I never had a conversation with Scott Cummings or anyone else about the age of the three applicants that were interviewed or about whether we were looking for someone who was going to be in the job for a long time.

6. After each interview, all the interviewers took part in discussing the candidate's performance during the interview, including qualifications of the applicant, concerns based on statements made during the interview by the applicant or other issues that may have arisen during the interview process. At no time was age a part of those discussions or decision-making process.

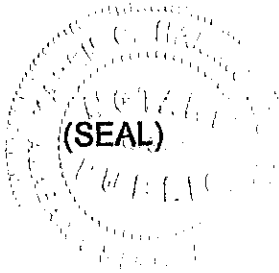
Further affiant saith not.

Respectfully submitted this 13 day of December 2007.


ERIC CARSON

STATE OF ALABAMA)
COUNTY OF LEE)

Before me the undersigned Notary Public in and for State and County aforesaid, personally appeared **ERIC CARSON**, who is personally known to me and who, being by me first duly sworn, doth depose and say that he signed the above affidavit to the best of his knowledge, information and belief and with full understanding of its effect.



NOTARY PUBLIC

Karen C. Hubbard

My Commission Expires: 3-20-2011

EXHIBIT “E”

AFFIDAVIT OF MIKEL THOMPSON

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

NORMAN E. LACEY,

Plaintiff,

-vs-

CITY OF AUBURN,

Defendant.

Case No. 3:06-cv-1145-MEF

AFFIDAVIT OF MIKEL THOMPSON

Before me, the undersigned authority, in and for said county and state, personally appeared Mikel Thompson, who being known to me and being first duly sworn, deposes and says under oath as follows:

1. My name is Mikel Thompson. I am a 29 year old male and I have personal knowledge of the matters set forth herein.

2. I am the Sewer Division Manager for the City of Auburn. I served on the Interview Committee when the Water Distribution Manager position had to be filled.

3. There were seven members of the Interview Committee. I questioned each of the applicants during the interview process and the questions for each involved the same topics.

4. Kyle Hildreth was my top choice for the position of Water Distribution Manager. His background made him more qualified based on the criteria we were looking for. He gave the best interview.




5. At no time before, during or after the interview process was the age of any applicant discussed. I never had a conversation with Scott Cummings or anyone else about the age of the three applicants that were interviewed or about whether we were looking for someone who was going to be in the job for a long time.

6. After each interview, all the interviewers took part in discussing the candidate's performance during the interview, including qualifications of the applicant, concerns based on statements made during the interview by the applicant or other issues that may have arisen during the interview process. At no time was age a part of those discussions or decision-making process.

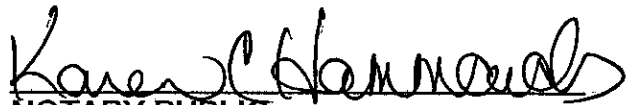
Further affiant saith not.

Respectfully submitted this 13 day of December 2007.


MIKEL THOMPSON

STATE OF ALABAMA)
COUNTY OF LEE)

Before me the undersigned Notary Public in and for State and County aforesaid, personally appeared **MIKEL THOMPSON**, who is personally known to me and who, being by me first duly sworn, doth depose and say that he signed the above affidavit to the best of his knowledge, information and belief and with full understanding of its effect.


NOTARY PUBLIC

(SEAL)

My Commission Expires: 3-20-2011

EXHIBIT “F”

AFFIDAVIT OF CHARLES HOWARD

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

NORMAN E. LACEY,

Plaintiff,

-VS-

CITY OF AUBURN,

Defendant.

Case No. 3:06-cv-1145-MEF

AFFIDAVIT OF CHARLES HOWARD

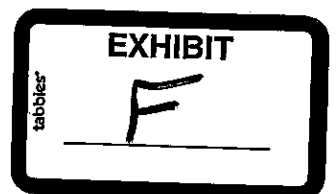
Before me, the undersigned authority, in and for said county and state, personally appeared Charles Howard, who being known to me and being first duly sworn, deposes and says under oath as follows:

1. My name is Charles Howard. I am a 56 year old male and I have personal knowledge of the matters set forth herein.

2. I am the Heavy Equipment Operator of the Water Works Board of the City of Auburn. I served on the Interview Committee when the Water Distribution Manager position had to be filled.

3. There were seven members of the Interview Committee. I did not ask questions of the applicants during the interview process.

4. Kyle Hildreth was my top choice for the position of Water Distribution Manager. His background made him more qualified based on the criteria we were looking for. He gave the best interview.

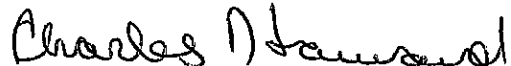


5. At no time before, during or after the interview process was the age of any applicant discussed. I never had a conversation with Scott Cummings or anyone else about the age of the three applicants that were interviewed or about whether we were looking for someone who was going to be in the job for a long time.

6. After each interview, all the interviewers took part in discussing the candidate's performance during the interview, including qualifications of the applicant, concerns based on statements made during the interview by the applicant or other issues that may have arisen during the interview process. At no time was age a part of those discussions or decision-making process.


Further affiant saith not.

Respectfully submitted this 13 day of December 2007.


CHARLES HOWARD

STATE OF ALABAMA)
COUNTY OF LEE)

Before me the undersigned Notary Public in and for State and County aforesaid, personally appeared **CHARLES HOWARD**, who is personally known to me and who, being by me first duly sworn, doth depose and say that he signed the above affidavit to the best of his knowledge, information and belief and with full understanding of its effect.


NOTARY PUBLIC

(SEAL)

My Commission Expires: 3.20.2011

EXHIBIT “G”

AFFIDAVIT OF JILL HOLLAND

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

NORMAN E. LACEY,

Plaintiff,

-vs-

CITY OF AUBURN,

Defendant.

Case No. 3:06-cv-1145-MEF

AFFIDAVIT OF JILL HOLLAND

Before me, the undersigned authority, in and for said county and state, personally appeared Jill Holland, who being known to me and being first duly sworn, deposes and says under oath as follows:

1. My name is Jill Holland. I am a 43 year old female and I have personal knowledge of the matters set forth herein.
2. I am the Water Revenue Office Manager for the Water Works Board of the City of Auburn. I served on the Interview Committee when the Water Distribution Manager position had to be filled.
3. There were seven members of the Interview Committee. I asked the three applicants the same questions during the interview process.
4. Kyle Hildreth was my top choice for the position of Water Distribution Manager. His background made him more qualified based on the criteria we were looking for. He gave the best interview.



5. At no time before, during or after the interview process was the age of any applicant discussed. I never had a conversation with Scott Cummings or anyone else about the age of the three applicants that were interviewed or about whether we were looking for someone who was going to be in the job for a long time.

6. After each interview, all the interviewers took part in discussing the candidate's performance during the interview, including qualifications of the applicant, concerns based on statements made during the interview by the applicant or other issues that may have arisen during the interview process. At no time was age a part of those discussions or decision-making process.

Further affiant saith not.

Respectfully submitted this 13 day of December 2007.


JILL HOLLAND

STATE OF ALABAMA)
COUNTY OF LEE)

Before me the undersigned Notary Public in and for State and County aforesaid, personally appeared **JILL HOLLAND**, who is personally known to me and who, being by me first duly sworn, doth depose and say that she signed the above affidavit to the best of her knowledge, information and belief and with full understanding of its effect.


NOTARY PUBLIC

My Commission Expires: 3-20-2011

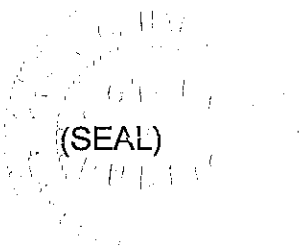


EXHIBIT “H”

AFFIDAVIT OF KATHY BULLARD

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

NORMAN E. LACEY,

Plaintiff,

-vs-

CITY OF AUBURN,

Defendant.

Case No. 3:06-cv-1145-MEF

AFFIDAVIT OF KATHY BULLARD

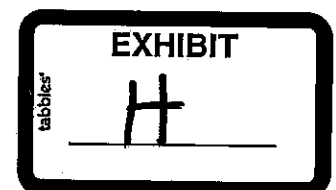
Before me, the undersigned authority, in and for said county and state, personally appeared Kathy Bullard, who being known to me and being first duly sworn, deposes and says under oath as follows:

1. My name is Kathy Bullard. I am a 60 year old female and I have personal knowledge of the matters set forth herein.

2. I am the Utility Database Coordinator for the Water Works Board of the City of Auburn. I served on the Interview Committee when the Water Distribution Manager position had to be filled.

3. There were seven members of the Interview Committee. I asked the three applicants follow up questions to their responses during their interviews.

4. Kyle Hildreth was my top choice for the position of Water Distribution Manager. His background made him more qualified based on the criteria we were looking for. He gave the best interview.

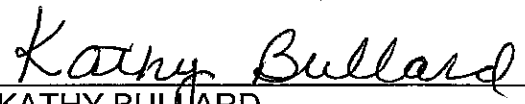


5. At no time before, during or after the interview process was the age of any applicant discussed. I never had a conversation with Scott Cummings or anyone else about the age of the three applicants that were interviewed or about whether we were looking for someone who was going to be in the job for a long time.

6. After each interview, all the interviewers took part in discussing the candidate's performance during the interview, including qualifications of the applicant, concerns based on statements made during the interview by the applicant or other issues that may have arisen during the interview process. At no time was age a part of those discussions or decision-making process.

Further affiant saith not.

Respectfully submitted this 13 day of December 2007.


KATHY BULLARD

STATE OF ALABAMA)
COUNTY OF LEE)

Before me the undersigned Notary Public in and for State and County aforesaid, personally appeared **KATHY BULLARD**, who is personally known to me and who, being by me first duly sworn, doth depose and say that she signed the above affidavit to the best of her knowledge, information and belief and with full understanding of its effect.


NOTARY PUBLIC

My Commission Expires: 3-20-2011

(SEAL)

EXHIBIT “I”

AFFIDAVIT OF DEREK GODFREY

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

NORMAN E. LACEY,

Plaintiff,

-vs-

CITY OF AUBURN,

Defendant.

Case No. 3:06-cv-1145-MEF

AFFIDAVIT OF DEREK GODFREY

Before me, the undersigned authority, in and for said county and state, personally appeared Derek Godfrey, who being known to me and being first duly sworn, deposes and says under oath as follows:

1. My name is Derek Godfrey. I am a 39 year old male and I have personal knowledge of the matters set forth herein.
2. I am the Water Coordinator for the Water Works Board of the City of Auburn. I served on the Interview Committee when the Water Distribution Manager position had to be filled.
3. There were seven members of the Interview Committee. I asked the three applicants follow up questions to their responses during their interviews.
4. Kyle Hildreth was my top choice for the position of Water Distribution Manager. His background made him more qualified based on the criteria we were looking for. He gave the best interview.



5. At no time before, during or after the interview process was the age of any applicant discussed. I never had a conversation with Scott Cummings or anyone else about the age of the three applicants that were interviewed or about whether we were looking for someone who was going to be in the job for a long time.

6. After each interview, all the interviewers took part in discussing the candidate's performance during the interview, including qualifications of the applicant, concerns based on statements made during the interview by the applicant or other issues that may have arisen during the interview process. At no time was age a part of those discussions or decision-making process.


Further affiant saith not.

Respectfully submitted this 13 day of December 2007.


DEREK GODFREY

STATE OF ALABAMA)
COUNTY OF LEE)

Before me the undersigned Notary Public in and for State and County aforesaid, personally appeared **DEREK GODFREY**, who is personally known to me and who, being by me first duly sworn, doth depose and say that he signed the above affidavit to the best of his knowledge, information and belief and with full understanding of its effect.


NOTARY PUBLIC

My Commission Expires: 3.20.2011

(SEAL)

EXHIBIT “J”

HILDRETH DRIVER’S LICENSE

Alabama Driver License

ISS: 08-13-2004
EXP: 08-04-2008

No: 4862978 Director of Public Safety
W. M. Cabbage

KYLE RUSSEL HILDRETH
1109 E SAMFORD AVE
AUBURN AL 36830

CLASS	ENDORSEMENTS	RESTRICTIONS
DM		

DOB	SSN
08-01-1964	

SEX	HT	WT	EYES	HAR
M	5-11	210	GRN	BRN

Kyle Hildreth





EXHIBIT “K”

HILDRETH APPLICATION FOR WATER DISTRIBUTION MANAGER

CITY OF AUBURN

EMPLOYMENT APPLICATION

PRINT IN INK OR TYPE. COMPLETE CAREFULLY & IN FULL
RESUME MAY BE ATTACHED, BUT WILL NOT SUBSTITUTE FOR COMPLETION OF APPLICATION



The City of Auburn is an Equal Opportunity Employer. It is our policy to provide equal employment opportunities for all individuals without regard to race, sex, age, religion, color, national origin, disability, or veteran status.

NAME (Last) <u>Hildreth</u> (First) <u>Kyle</u> (Middle) <u>Russell</u>			SOCIAL SECURITY NO. <u>419-96-0290</u>
Any other name, such as nicknames, maiden name, or assumed name, needed to verify the contents of this application.			HOME PHONE <u>(334) 887-6682</u>
ADDRESS (Number and Street) <u>1109 E. Samford Ave.</u>			ALTERNATE PHONE ()
CITY <u>Auburn</u>	STATE <u>AL</u>	ZIP CODE <u>36830</u>	E-MAIL ADDRESS <u>hildreth6@netzero.net</u>
POSITION DESIRED <u>Water Distribution Manager</u>			TYPE OF EMPLOYMENT PREFERRED (please check only one)
Have you reviewed the job description? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			<input checked="" type="checkbox"/> Regular/Full-Time <input type="checkbox"/> Regular/Part-Time
			<input type="checkbox"/> Temporary/Full-Time <input type="checkbox"/> Temporary/Part-Time
Have you been previously employed with the City of Auburn? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, list the dates of employment _____			
Title _____ Department _____ Who was your supervisor? _____			

EDUCATION	Circle Year Completed	Major	Are you currently enrolled?	Degree Obtained
High School <u>Auburn High</u>	Fr. So. Jr. <input checked="" type="radio"/> GED		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Junior College <u>Southern Union</u>	<input checked="" type="radio"/> So. Jr. Sr.		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
College <u>Auburn University</u>	Fr. So. Jr. <input checked="" type="radio"/>	<u>Business Management</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>B.S.</u>
Graduate or Vocational School			Yes <input type="checkbox"/> No <input type="checkbox"/>	

EMPLOYMENT HISTORY - List entire employment history, starting with your present employer (attach additional sheets if necessary).			
Company Name: <u>Twih City Concrete</u>	Position: <u>Plant Manager</u>	Last Pay Rate: <u>4313 / mo.</u>	
Address: <u>214 Twih City Ct.</u>	Supervisor's name: <u>Charles Bell</u>	Hours Per Week: <u>50-70</u>	
City / State / Zip: <u>Auburn, AL 36830</u>	From: <u>August 1988</u>	Reason for Leaving: _____	
Phone #: <u>334-821-3363</u>	To: <u>Present</u>		
Company Name: <u>J&M Bookstore</u>	Position: <u>Stock Clerk</u>	Last Pay Rate: <u>\$5.50 / hr</u>	
Address: <u>115 S. College St.</u>	Supervisor's name: <u>Wyman Hildreth</u>	Hours Per Week: <u>30-45</u>	
City / State / Zip: <u>Auburn, AL 36830</u>	From: <u>August 1980</u>	Reason for Leaving: <u>School</u>	
Phone #: <u>334-887-7007</u>	To: <u>November 1987</u>		
Company Name: _____	Position: _____	Last Pay Rate: _____	
Address: _____	Supervisor's name: _____	Hours Per Week: _____	
City / State / Zip: _____	From: _____	Reason for Leaving: _____	
Phone #: _____	To: _____		
May we contact the employers listed above? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If not, please indicate which one(s) you do not want us to contact _____			

EXHIBIT

K

Briefly describe major duties of positions previously held and further details of qualifications. Daily operations of company; order and schedule delivery of materials and maintain inventory; schedule start times and supervise 18-20 employees; receive orders and prioritize delivery of shipments; work with customers to ensure satisfaction; maintain quality control; assist in processing payroll.

PROFESSIONAL REGISTRATION, LICENSES, OR ACCREDITATION

OTHER INFORMATION AND SKILLS

☐ Typing WPM _____ Microsoft Office Proficiency Level: ☐ Beginning ☒ Intermediate ☐ Advanced

☒ Multi-line Telephone _____ Computer Software Used Word, Excel

Drivers License Number and State: 4862978 Alabama

Shop and Outdoor Equipment Used: Front End Loader

Other Equipment, Skills or Aptitudes: _____

Have you ever been discharged or forced to resign from employment? ☐ Yes ☒ No If yes, give name of employer(s) and reason(s) _____

Name of Relative(s) employed by the City of Auburn: _____

Relationship _____

Have you ever been convicted of a crime (felony or misdemeanor including DUI) other than minor traffic citations? ☐ Yes ☒ No
If yes, give details (note: A criminal record is not necessarily a bar to employment. Each applicant is considered on an individual basis.) _____

U.S. MILITARY	Branch of Service	Dates From	To	Rank
Describe any training that you feel is relevant:				Type of Discharge:

Are you prevented from lawfully becoming employed in this country because of VISA or immigration status? ☐ Yes ☒ No

Proof of citizenship or immigration status will be required upon employment.

Applicant's Agreement:

I hereby state that the information given by me on this form and in any interview is certified to be true and complete. I understand that this information is subject to verification, and that if this information is later found to be untrue, incomplete, or misrepresented in any way, this will be cause for rejection of my application or, if already employed, for immediate dismissal. I also understand that the City of Auburn may investigate my driving record and my criminal record, and that a background investigation, including a credit check, may be prepared whereby information is obtained through personal interviews with my neighbors, friends, and others with whom I am acquainted. This inquiry includes information as to my character, general reputation, and personal characteristics. I understand that I have the right to make a written request within a reasonable period of time to receive additional detailed information about the nature and scope of this investigation. I understand that the City of Auburn reserves the right to require me to submit to a medical examination, including a drug/alcohol test, prior to employment and at any time during employment to the extent permitted by law. I understand that the Employer's acceptance of this application does not indicate there are any positions open and does not in any way obligate the City of Auburn. Job applicants are required to submit to drug testing at or near the final stage of the hiring process. Any offer of employment will be conditional upon a negative drug test result. I understand that anything brought to or removed from the premises of the City of Auburn is subject to search at the City's election and I consent to such search. Specifically, I authorize the City, in its discretion, to search my desk, locker, or other areas for contraband in such circumstances when the City deems such search necessary or appropriate.

I understand that this application will be given every consideration, but it is not a promise of employment. I further understand that if I am hired my employment will be for no definite period, regardless of the period of payment of my wages. I understand that I have the right to terminate my employment at any time, with or without notice, and the City of Auburn has the same right. No one other than the City Manager of the City of Auburn has the authority to modify this relationship or to make any agreement to the contrary. Any such modification or agreement must be in writing.

Applicant's Release:

I hereby authorize any prior employers to provide such information concerning my employment with them as may be requested, and also authorize the Registrar's or Placement Office of all educational institutions attended to release an official copy of my transcript if requested. In addition, I authorize any law enforcement jurisdiction to release any information requested regarding my background to the City of Auburn.

Selective Service Certification:

I certify that I comply with the provisions of the United States Military Service Act (50 U.S.C. App 453) by having registered with the Selective Board or that I am not required by law to register.

APPLICANT'S SIGNATURE

Kyle R. Hildeeth

DO NOT WRITE BELOW THIS LINE

TEST RESULTS _____

